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No. 71.

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1949.**

**FEDERAL POWER COMMISSION,**

*Petitioner,*

**v.**

**THE EAST OHIO GAS COMPANY,**

**STATE OF OHIO,**

**THE PUBLIC UTILITIES COMMISSION OF OHIO,**

*Respondents.*

**ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT.**

**PETITION FOR REHEARING BY THE EAST OHIO  
GAS COMPANY.**

**WILLIAM B. COCKLEY,**

**WALTER J. MILDE,**

**WM. A. DOUGHERTY,**

*Attorneys for Respondent*

*The East Ohio Gas Company.*

**C. W. COOPER,  
STURGIS WARNER,**

*Of Counsel.*

**January, 1950.**

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## **PETITION FOR REHEARING BY THE EAST OHIO GAS COMPANY.**

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*To the Honorable the Justices of the Supreme Court of the  
United States:*

The East Ohio Gas Company, respondent herein, presents this petition for a rehearing and respectfully urges a reconsideration of the decision herein on the following grounds:

1. The several grave matters of conflict and confusion in Ohio regulation of East Ohio and other Ohio retail distributing companies which will result from the decision, all as set forth in the petition for rehearing by the State of Ohio and The Public Utilities Commission of Ohio. No utility or its customers should be the victims of unresolved doubts as to who regulates it and to what extent.

2. The following additional matters not fully set forth by the Ohio authorities:

the opinion herein which recognizes "the congressional exemption of local distribution systems."

Respectfully submitted,

WILLIAM B. COCKLEY,  
WALTER J. MILDE,  
WM. A. DOUGHERTY,

*Attorneys for Respondent  
The East Ohio Gas Company.*

C. W. COOPER,  
STURGIS WARNER,  
*Of Counsel.*

January, 1950.

**CERTIFICATE OF COUNSEL.**

I, WALTER J. MILDE, counsel for The East Ohio Gas Company, do hereby certify that the foregoing petition for a rehearing is presented in good faith and not for delay.

WALTER J. MILDE,  
*Counsel for  
The East Ohio Gas Company.*

January 21, 1950.



(a) The decision misapplies *Illinois Gas Co. v. Public Service Co.*, 314 U. S. 498 (1942), as determinative of this case. The Illinois Gas Company's sole business was selling gas for resale—a wholesale operation. All of its property was devoted to that end. It had no facilities for and did not engage in local distribution. East Ohio's sole business is local distribution—a retail operation. All of its property is devoted to that end. The difference between this wholesaler and East Ohio as a retailer must necessarily be material because the Natural Gas Act expressly subjects "the wholesale distribution to public service companies of natural gas moving interstate" to Federal Power Commission jurisdiction (314 U. S. 498, 506). It just as expressly exempts retail distribution under the terms "local distribution" and "the facilities used for such distribution." We most respectfully submit that in view of the express language of Section 1(b) of the Natural Gas Act and its legislative history a prior decision of this Court that an intrastate wholesaling company, like Illinois Gas, is subject to Federal Power Commission jurisdiction should not be applied as a controlling authority to the effect that an intrastate retailing company, like East Ohio, is likewise subject to Federal Power Commission jurisdiction.

(b) The great bulk of East Ohio's property is what the decision recognizes as "local mains" which the State alone can regulate and which Section 1(b) of the Act expressly excludes from *all* provisions of the Natural Gas Act. Nevertheless the Federal Power Commission's orders here directly and expressly relate to, and accounting-wise regulate, this very property. We respectfully submit that at the very least the decision herein requires modification to restrict the general accounting and report orders of the Federal Power Commission to the portion of East Ohio's property which the decision holds is involved in "transportation" and "interstate commerce" in "East Ohio's high-pressure pipe lines." Otherwise the decision permits Fed-

eral Power Commission jurisdiction to extend to the great bulk of East Ohio's property which the opinion recognizes is clearly excluded from such jurisdiction.

(c) There is an important statement in the opinion which is not supported by the record. In discussing possible transgressions of statutory and constitutional limits the decision recites: "Nor did the Commission fail to make proper findings to support its order." The only findings made by the Commission after a hearing in this proceeding are in its order of June 25, 1946, and appear at R. 142-150. Most of these findings are as to jurisdictional aspects of the case. As to the orders now involved the sole findings are that they were duly served upon East Ohio and East Ohio did not comply.

No evidence, subject to cross examination or otherwise, was ever presented by the Federal Power Commission upon the question of the reasonable necessity of applying its general report and accounting orders as to *all* of East Ohio's property. The Commission's evidence and its findings concentrated on the issue of jurisdiction. Nor was there any judicial consideration of this question below (R. 205).

We most respectfully submit that in view of the great cost to East Ohio and its consumers of literal compliance with these general orders as to *all* of its properties, this Court should in any event remand this case for a full and fair hearing on the reasonableness and the necessity of the Federal Power Commission's general orders as applied to East Ohio's 69 city plants. We believe that upon appropriate consideration and in the light of the enormous expense involved the Federal Power Commission will determine at such hearing that it does not need accounting and original cost data on East Ohio's city plants.

Such a determination, moreover, would be consistent with and we believe ought to follow from the first part of